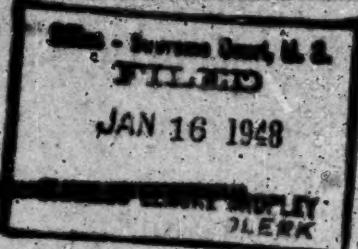


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Supreme Court of the United States

JANUARY TERM, 1948

No. 530

HAZEL E. BRIGGS, as Administratrix of the goods,
chattels and credits which were of RALPH BRIGGS,
Deceased,

Petitioner,

—against—

THE PENNSYLVANIA RAILROAD COMPANY,

Respondent.

PETITION AND BRIEF IN BEHALF OF HAZEL
E. BRIGGS IN SUPPORT OF HER PETITION
FOR WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS, SEC-
OND CIRCUIT.

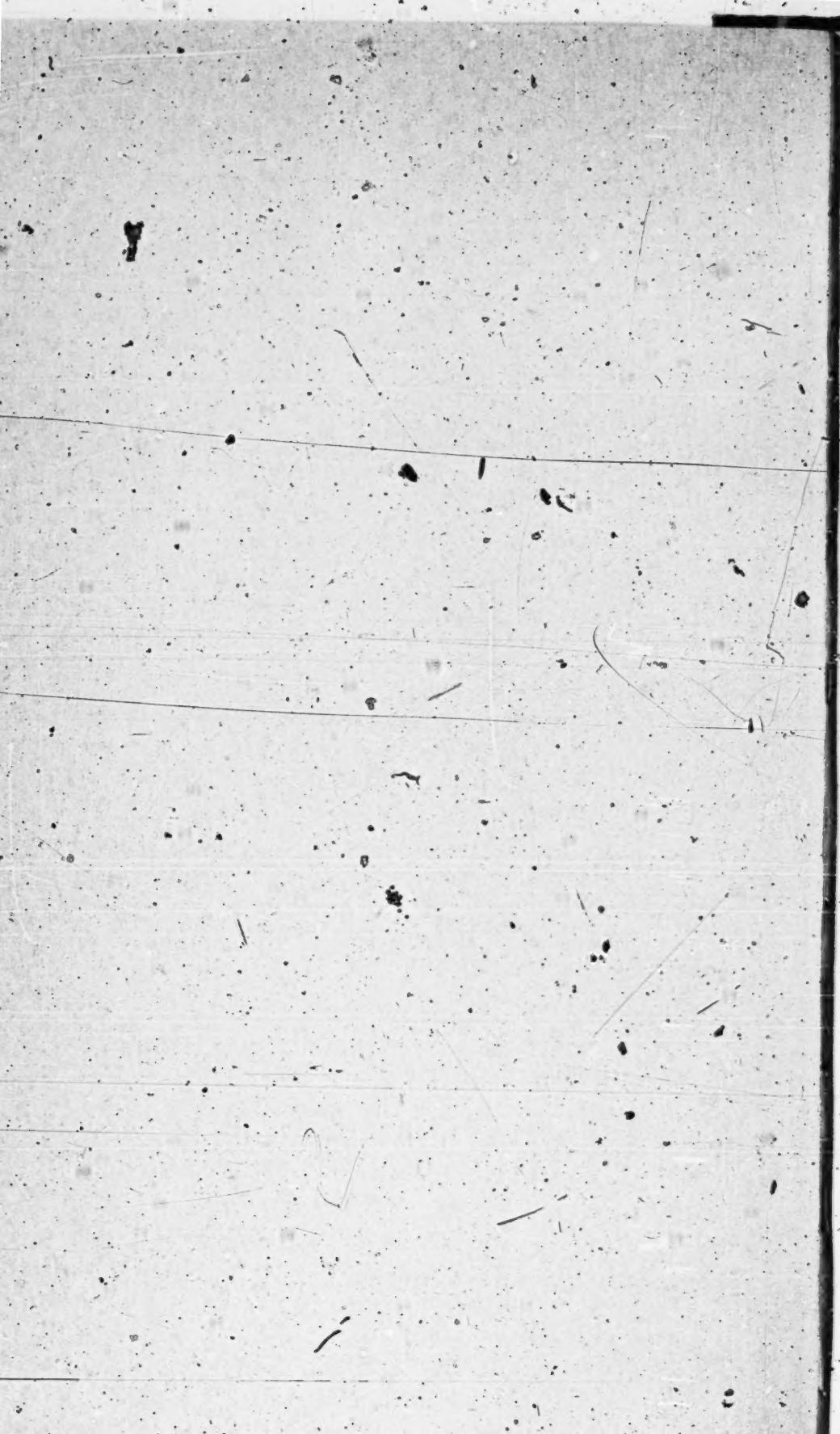
SOL GELB,

Counsel for Petitioner,

No. 30 Broad Street,
Borough of Manhattan,
New York City.

ALFRED T. ROWE,

Attorney for Petitioner.



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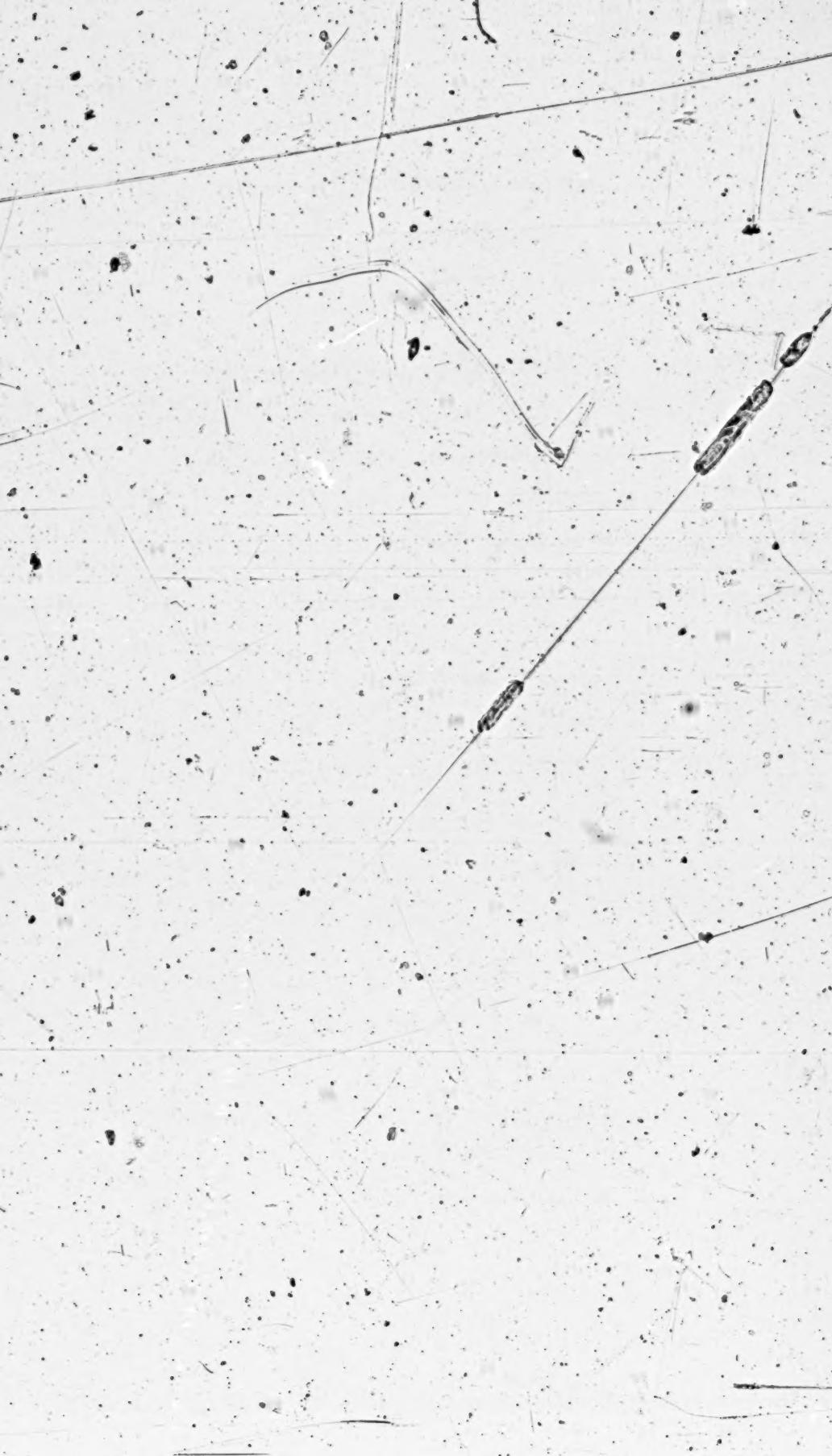
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Supreme Court of the United States

JANUARY TERM, 1948

No.

HAZEL E. BRIGGS, as Administratrix
of the goods, chattels and credits
which were of RALPH BRIGGS,
Deceased,

Petitioner.

—against—

THE PENNSYLVANIA RAILROAD
COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI

May it Please the Court:

The Petitioner, Hazel E. Briggs, respectfully petitions
this Honorable Court for a Writ of Certiorari to the
United States Circuit Court of Appeals for the Second
Circuit.

Summary Statement of Case

The Petitioner, as Administratrix of the goods, chattels and credits which were of Ralph Briggs, Deceased; brought this action in the Federal Court for the Southern

District of New York under the Federal Employers' Liability Act. (45 U. S. C., 51-59). She sued under Letters issued to her by the Register of Wills of the County of Tyrone, State of Pennsylvania, to recover damages for the death of her husband, brought about through the negligence of the carrier while in its employ.

One of the defenses raised to the action was:

"that plaintiff as a foreign administratrix lacked capacity to maintain the action in the Federal Court in New York."

On the trial defendant conceded liability, but moved to dismiss because of lack of jurisdiction. The Trial Court reserved decision on this motion.

A jury verdict was rendered in favor of petitioner on February 15, 1945 in the sum of \$42,500.00.

Following the jury verdict, the Trial Judge granted defendant's motion to dismiss and on April 15, 1945 a judgment was entered in favor of defendant.

On January 23rd, 1946 the Circuit Court reversed the judgment for defendant stating:

"Judgment reversed; judgment to be entered for plaintiff on the verdict."

Subsequent to this reversal and on the 26th day of January, 1946 the District Court entered a judgment in favor of the plaintiff on the verdict and included therein interest from the date the verdict was rendered to the date of entry of judgment in petitioner's favor.

Defendant moved to resettle this judgment by disallowing interest. This motion was denied.

Defendant paid the amount of the verdict but appealed from so much of the judgment as represented interest.

On October 30th, 1947 the Circuit Court of Appeals, Second Circuit, modified the judgment in favor of plaintiff so as to exclude all interest on the amount of the verdict from the date of its rendition on February 15, 1945 to the date judgment was entered for petitioner on January 26th, 1946 amounting to \$2,429.58.

It is the contention of petitioner that she was entitled to interest from the date of the verdict not alone under the Federal Law, Rules and Decisions but under New York Law as well.

The action of the Circuit Court appears to have been predicated upon the theory that because the action was to enforce liability under a Federal Statute that interest on a recovery could only be allowed in accordance with Federal Law, namely: 28 U. S. C. A., Sec. 811.

The Questions Presented

The questions here presented are:

First: Whether a litigant who has obtained a *jury verdict* is entitled to interest under the equity of Rule 811, where delay in entering judgment forthwith in his favor, pursuant to Rule 58, following Title 28, U. S. C. A., 723 C., was caused by the erroneous dismissal of his complaint by the Trial Court.

Second: There being no prohibition in any Federal Law against interest on verdicts, is plaintiff entitled under Section 480 of the Civil Practice Act of the State of New York to interest on a verdict from the time of its recovery in an action brought under the Federal Employers' Liability Act (45 U. S. C. A., 51-59).

Reasons Relied on for Allowance of Writ

First: While Rule Title 28, U. S. C. A., Section 811 states that interest shall be allowed on judgments from the date they are entered, it has long been held to be within the equity of this Rule, that where delays have occurred in their entry through no fault of the aggrieved party, interest is allowable from the date the judgment could or should have been entered.

Under Rule 58, upon the rendition of the jury verdict, the Clerk was obliged to enter judgment in favor of the successful party forthwith. This he was prevented from doing by the erroneous dismissal of the action by the Trial Judge. The defendant certainly should not be permitted to profit nor the plaintiff to suffer because of error committed by the Trial Judge. As the plaintiff should have had judgment entered in her favor upon the rendition of the verdict, there was no necessity that the mandate of the Circuit Court should direct the Clerk to add interest to the jury verdict.

Second: While the action was brought under a Federal Statute and the measure of recovery must be in accordance with the Federal Law, there is no provision in the Federal Employers' Liability Act or any Federal Law prohibiting the allowance of interest from the date of a jury verdict. There being no such prohibition; under the New York State Statute, Civil Practice Act, Section 480, plaintiff was entitled to interest from the date of the verdict.

Third: The decision of this Circuit is in conflict with those of other Circuits on this subject.

Respectfully submitted,

HAZEL E. BRIGGS, as Administratrix of the
goods, chattels and credits which were
of RALPH BRIGGS, Deceased,

By: SOL GELB,

Counsel for Petitioner.

Supreme Court of the United States

JANUARY TERM, 1946

No.

HAZEL E. BRIGGS, as Administratrix
of the goods, chattels and credits
which were of RALPH BRIGGS,
Deceased,

Petitioner,

—against—

THE PENNSYLVANIA RAILROAD
COMPANY,

Respondent.

BRIEF IN BEHALF OF HAZEL E. BRIGGS IN SUPPORT OF HER PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT.

Statement

This cause came before the Circuit Court of Appeals for the Second Circuit on an appeal from that portion of a judgment of the United States District Court which granted interest to petitioner on a jury verdict from the date of its rendition, on February 15, 1945, to the date judgment was ultimately entered in her favor on January 26, 1946.

The judgment was modified so as to exclude all interest upon the amount of the verdict up to the date judgment was entered as aforesaid, and, as so modified was affirmed.

POINT I.

Plaintiff was entitled to interest from the date of verdict within the equity of Rule 811.

Title 28, U. S. C. A., Rule 811, reads as follows:

"S. 811. Interest on Judgments.

"Interest shall be allowed on all judgments in civil causes, received in a district court, and may be levied by the Marshal under process of execution issued thereon, in all cases where, by the law of the State in which such court is held, interest may be levied under process of execution on judgments recovered in the courts of such State; and it shall be calculated from the date of the judgment, at such rate as is allowed by law on judgments received in the courts of such State."

Rule 58, Federal Rules of Civil Procedure, 28 U. S. C. A. following Section 723C provides that judgment upon the verdict of a jury shall be entered forthwith by the clerk unless the Court otherwise directs.

But for the error committed by the trial judge in dismissing plaintiff's complaint, plaintiff could and should have had judgment entered in her favor on the jury verdict.

In the case of *Louisiana & Arkansas Ry. Co. v. Pratt*,

(5 Cir.) 142 Fed. (2d) 847, it was held that where judgment was improperly entered for defendant, plaintiff was entitled to interest from the date judgment should have been entered, the Court stating:

"The only applicable federal statute, Section 966 of the Revised Statutes, provides that interest shall be allowed from date thereof on all judgments in civil causes recovered in a district court. Under this statute, as appellant admits, appellee was entitled to interest at least from the date of entry of judgment on the mandate. It has been held to be within the equity of Section 966 of the Revised Statutes to award interest from the date of the verdict where, without fault of the plaintiff, an appreciable time has elapsed between the rendition of the verdict and the entry of the judgment. Moreover, Rule 58 of the Federal Rules of Civil Procedure, 28 U. S. C. A. following Section 723c, provides that, unless the court otherwise directs, judgment upon the verdict of a jury shall be entered forthwith by the clerk. Under said rule, the date of the verdict and the date when the judgment should have been entered are the same in this case. For these reasons, we conclude that plaintiff below was entitled to interest from the date judgment should have been entered as required by said Rule 58. Such award is within the equity of the federal statute on judgments, and is not inconsistent with the Federal Employers' Liability Act."

As the case at bar now stands the holding of the Circuit Court of Appeals is in direct conflict with the decision in the Fifth Circuit.

The lower Court declined to follow this case, cited *Murphy v. Lehigh Valley R. Co.*, 2 Cir., 158 F. 2d, 481, and stated that:

"Since no judgment could have been entered until the motion pending after verdict had been decided by the trial court, no interest can be allowed between the date of the verdict (February 15, 1945) and May 28, 1945 when that motion was decided and the judgment for the defendant was erroneously entered."

Then on the question of whether plaintiff should have interest from the date judgment was erroneously entered for defendant, the lower Court stated:

"It is true that subsequent events have shown that on the date of the original judgment the plaintiff was entitled to have judgment entered on the verdict and that this judgment would have borne interest until it was paid. But from a practical standpoint it is equally true that the plaintiff then was 'entitled' only to have the trial judge decide the pending motions and direct the entry of such judgment as he fairly determined to be lawful and just."

While the lower Court went to some length to point out why judgment could not have been entered until after the reversal by the Circuit Court, and while it declined to follow the case of *Louisiana & Arkansas Ry. Co. v. Pratt*, (supra), at no place did it refer to or discuss the equity under the Federal Interest Statute or the holding contained in the *Louisiana* case that:

"It has been held to be within the equity of section 966 of the revised statutes to award inter-

est from the date of verdict where, without fault of the plaintiff, an appreciable time has elapsed between rendition of the verdict and the entry of the judgment."

To the same effect are the following cases:

Fowler v. Bedfield (C. C. N. Y. 1862) Fed. Cas.

No. 5,003;

Dowell v. Griswold (C. C. Or. 1877) Fed. Cas.

No. 4,040;

Gibson v. Cincinnati Enquirer (C. C. Ohio, 1877)

Fed. Cas. No. 5,391;

Griffith v. Baltimore & O. R. Co. (C. C. Ohio

1890) 44 F. 574, aff'd (1895) 16 S. Ct. 105,

159 U. S. 603, 40 L. Ed. 274.

See also:

Leitch v. Chesapeake & O. Ry. Co. (1924) 125

S. E. 370, 97 W. Va. 498.

POINT II.

Plaintiff was entitled to interest under the New York Interest Statute.

Section 480 of the Civil Practice Act of the State of New York, reads as follows:

"Sec. 480. *Interest to be Included in Recovery.*
Where in any action, except as provided in section four hundred eighty-a, final judgment is rendered for a sum of money awarded by a verdict, report

or decision, interest upon the total amount awarded, from the time when the verdict was rendered or the report or decision was made to the time of entering judgment, must be computed by the clerk, added to the total amount awarded, and included in the amount of judgment.

There is no Federal Law dealing with the subject of interest between the rendition of a jury verdict and the entry of judgment.

In the absence of Federal Law prohibiting same, it has been held that interest may be recovered under State Statutes.

Mass. Ben. Assoc. v. Miles, 137 U. S. 689;

Klaxon v. Stenter Em. Co., 313 U. S. 487;

Voelker v. D. L. & W. R. Co., 31 Fed. Supp. 515;

Louisiana & Arkansas Ry. Co. v. Pratt, 5th Cir., 142 Fed. (2d) 847.

The *Mass. Ben. Assoc. v. Miles*, *supra*, involved a Pennsylvania Statute which provided for interest on the verdict as does Section 480 of the New York Civil Practice Act, also former U. S. Revised Statute, Section 966, which provided for interest on judgments in the same manner as is now provided for in Section 811 of U. S. Code Annotated, Title 28. In holding that plaintiff was entitled to interest as provided by the Pennsylvania Statute the Court stated as follows:

"Sec. 966, while providing only for interest upon judgments does not exclude the idea of a power in the several states to allow interest upon verdicts, and where such allowance is expressly

made by a state statute, we consider it a right given to a successful plaintiff, of which he ought not be deprived by a removal of his case to the Federal Court."

The right to interest under a State Statute, was likewise considered in the *Louisiana & Arkansas Ry. Co. v. Pratt, supra*, on page 849, stated as follows:

"The Louisiana statute does not provide for interest from date of the verdict, but it may be construed as so doing since it allows interest from the earlier date of judicial demand, and only that part of it that awards interest prior to verdict is superseded by the Federal Employers' Liability Act.

"Said Section 966 of the Revised Statutes while awarding interest from date of judgment does not exclude the idea of a power in the several states to allow interest upon verdicts. State statutes are superseded by the Federal Employers' Liability Act only in so far as they are in conflict therewith, and said Liability Act does not legislate upon interest after verdict; hence it is not in conflict with any state statute that allows interest from the date of verdict. State and federal courts exercise concurrent jurisdiction over causes arising under the Federal Employers' Liability Act; interest is essentially a question of local law; and, for purposes of harmony and uniformity of administration, state statutes relating to interest should be applied whenever it is practicable to do so."

In the *Klaxon Co. v. Stentor Co.* case, *supra*, after discussing generally conflict of laws; with respect to the treatment of interest, stated:

"Besides these general considerations, the traditional treatment of interest in diversity cases brought in the federal courts points to the same conclusion. Section 966 of the Revised Statutes, 28 U. S. C., Sec. 811, relating to interest on judgments, provides that it be calculated from the date of judgment at such rate as is allowed by law on judgments recovered in the courts of the state in which the court is held. In *Massachusetts Benefit Association v. Miles*, 137 U. S. 689, this Court held that Section 966 did not exclude the allowance of interest on verdicts as well as judgments, and the opinion observed that 'the courts of the state and the federal courts sitting within the state should be in harmony upon this point' (p. 691)."

POINT III.

Plaintiff was entitled to have interest added by clerk on entering judgment in plaintiff's favor.

Interest on judgments being a matter of statutory regulation as hereinbefore pointed out, Courts are bound to give or withhold interest as the law directs.

Where party is entitled to interest, Circuit Court of Appeals had no discretion to allow or withhold interest, and where party is entitled to interest under Federal or State Laws, allowance of interest was mandatory so the fact that Circuit Court of Appeals in directing that judgment be entered for plaintiff failed to make a direction for inclusion of interest was immaterial. *Blair v. Durham*, 6 Cir., 139 F. 2d, 260.

CONCLUSION

It is respectfully submitted that because of the foregoing, the Writ of Certiorari should be granted.

Respectfully submitted,

SOL GELB,

Counsel for Petitioner.

No. 30 Broad Street,

Borough of Manhattan,

New York City.

ALFRED T. ROWE,

Attorney for Petitioner.

Dated: New York, New York,

January 15, 1948.